Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1996

LORELYN PENERO MILLER,

Petitioner,

v.

WARREN CHRISTOPHER, Secretary of State of The United States,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

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69 pp

QUESTIONS PRESENTED FOR REVIEW

1. Is the distinction in 8 U.S.C. Section 1409(a) between "legitimate" and "illegitimate" children an unconstitutional violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

2. Is the distinction in 8 U.S.C. Section 1409(a) between "illegitimate" children of U.S. citizen mothers and "illegitimate" children of U.S. citizen fathers an unconstitutional violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

3. Is 8 U.S.C. Section 1409 an unconstitutional taking away of citizenship previously conferred by 8 U.S.C. Section 1401(g)?

4. Is 8 U.S.C. Section 1409 unconstitutional under the rational basis test?

5. Does the Voluntary Paternity Decree which legitimizes the Plaintiff effective as of the date of her birth, effectively legitimized Plaintiff prior to her eighteenth birthday?

PARTIES TO THE PROCEEDINGS

PETITIONER:

Lorelyn Penero Miller

RESPONDENT:

Warren Christopher, Secretary of State

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PETITION FOR WRIT OF CERTIORARI

Lorelyn Penero Miller hereby petitions for a writ of certiorari and requests that this Court grant the petition, issue a writ of certiorari, reverse in part the judgment of the District of Columbia Circuit of the Court of Appeals and remand with instructions.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit is reproduced at Appendix A at 1 [hereinafter App.]. The Memorandum Opinion and Order, April 29, 1994, Royce C. Lamberth, United States District Judge, Civil Action No. 93-1182, U.S. District Court, District of Columbia is reproduced at Appendix B, App. at 26. The decision of Thomas W. Callow, acting Director, Office of Citizen Consular Services, dated, November 5, 1992, is found in Appendix C, App. at 32.

STATEMENT OF JURISDICTION

The jurisdiction of the Court is invoked under 28 U.S.C. Section 1254(1). The jurisdiction of the District Court was pursuant to 5 U.S.C. Section 704 and 28 U.S.C. Section 1331. The jurisdiction of the Court of Appeals was pursuant to 28 U.S.C. Section 1291 (Final Decisions of District Courts). The appeal was filed June 15, 1994 from

a Memorandum Opinion and Order, entered on April 29, 1994, dismissing the case.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

This petition concerns the due process clause of the fifth amendment with its guarantee of equal protection under the law.

8 U.S.C. Section 1401. Nationals and citizens of the United States at birth.

> "The following shall be nationals and citizens of the United States at birth: . . .
>
> (g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years: Provided, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in Section 1 of the International Organization Immunities Act (59 Stat. 669; 22 U.S.C. 288) by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or

> (B) employed by the United States Government or an international organization as defined in section 1 of the International Organizations Immunities Act, may be included in order to satisfy the physical-presence requirement of the paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date; and . . . "

8 U.S.C. Section 1409. Children born out of wedlock

> "(a) The provisions of paragraphs (c), (d), (e), and (g) of Section 301 [8 USCS section 1401(c)-(e), (g)], and of paragraph (2) of Section 308 [8 USCS Section 1408(2)], shall apply as of the date of birth to a person born out of wedlock if –
>
> (1) a blood relationship between the person and the father is established by clear and convincing evidence,
>
> (2) the father had the nationality of the United States at the time of the person's birth,
>
> (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
>
> (4) while the person is under the age of 18 years –
>
> (A) the person is legitimated under law of the person's residence domicile,
>
> (B) the father acknowledges paternity the person in writing under oath, or

(C) the paternity of the person established by adjudication of competent court.

(b) Except as otherwise provided in section 405 [8 USCS Section 1101 note], the provisions of section 301(g) [8 USCS Section 1401(g)] shall apply to a child born out of wedlock on or after January 13, 1941, and before December 24, 1952, as of the date of birth, if the paternity of such child is established at any time while such child is under the age of twenty-one years of legitimation.

(c) Notwithstanding the provision of subsection (a) of this section, a person born, after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year."

STATEMENT OF THE CASE

A. Factual Background

The Plaintiff, Lorelyn Penero Miller, was born on June 20, 1970 in Angeles City, Republic of the Philippines, the daughter of Luz Penero, a Philippine citizen, and Charlie R. Miller, an American serviceman. The Plaintiff's parents were not married at the time of her birth, nor did they subsequently marry. Her father, Charlie R. Miller, was a U.S. serviceman who left the Philippines upon the

conclusion of his tour of duty. On July 27, 1992, the 321st Judicial District Court of Smith County, Texas signed a Voluntary Paternity Decree declaring, at the request of Charlie R. Miller, that the Plaintiff was his biological and legal child. The decree legitimizes Lorelyn at birth.

In November 1991, Plaintiff, Lorelyn Penero Miller, duly applied to Defendant for registration as a United States Citizen and for issuance of a passport pursuant to 22 U.S.C. Section 221A and 22 C.F.R. Sections 5.13 and 5.120. The application was denied in a letter dated March 23, 1992. A copy of the Voluntary Paternity Decree and other information was provided to the Defendant and reconsideration of the application by the Defendant was requested. In a letter dated August 11, 1992, from Richard Roseman, Chief Passport and Citizenship Unit, United States Embassy, Manila it was stated:

"Thank you for your letter of July 30, 1992 regarding the registration as a U.S. Citizen of Lorelyn Penero Miller.

We are forwarding a copy to the State Department of the petition decree which legitimizes Lorelyn, and we are asking that this case be reconsidered. Although the final determination will be made in Washington, in our opinion the petition decree legitimizes Lorelyn at birth. Should the Department agree with us, we will be most pleased to register her as a U.S. Citizen and issue her a U.S. Passport.

We will contact Lorelyn directly as soon as a decision is reached in this matter." (Appendix D, App. at 36)

In a subsequent letter dated August 28, 1992, Mr. Roseman informed the Plaintiff, Lorelyn Penero Miller, that her application for registration as U.S. citizen had been denied for the stated reason that her legitimation had not occurred prior to her eighteenth birthday. In a notice dated November 5, 1992, Plaintiff was informed that Thomas W. Callow, Acting Director, Office of Citizens Counselor Services, had upheld the decision denying recognition as a U.S. Citizen and denying an passport to the Plaintiff, (Appendix C, App. at 32). The Plaintiff then filed this suit in the Eastern District of Texas on January 22, 1993. The Plaintiff's father, Charlie R. Miller, was dismissed as a Plaintiff and the case was transferred to the United States District Court for the District of Columbia by an order signed on the 2nd day of June, 1993.

B. Proceedings Before the District Court

In a Memorandum Opinion and Order (Appendix B, App. at 26) filed April 29, 1994, the case was dismissed by Judge Royce C. Lamberth, United States District Judge for the District of Columbia, on the basis that Ms. Miller lacked standing.

C. Proceedings Before The Court of Appeals

The Plaintiff appealed to the Court of Appeals for the District of Columbia Circuit. The Court of Appeals held

> "that Ms. Miller had standing to bring this action; but in light of controlling Supreme Court precedent, we conclude that the challenged statute [8 U.S.C. § 1409] is Constitutional."

The Court of Appeals believed that the Supreme Court's decision in *Fiallo v. Bell*, 430 U.S. 787, 97 S.Ct. 1473, 52 L.Ed.2d 50 (1977) foreclosed it from holding 8 U.S.C. Section 1409 unconstitutional.

Judge Wald wrote a separate opinion in which she "regretfully" concurred in the judgment against Ms. Miller. She concluded:

> "*Fiallo* is a Supreme Court decision directly on point and, as a result, we have no choice but to hold section 1409(a) constitutional. Yet I think it is important to underscore the extent to which *Fiallo* is out of step with the Court's current refusal to sanction "official action that closes a door or denies opportunity to women (or to men)" based on stereotypes or "overbroad generalizations" about men and women. *Virginia*, 116 S. Ct. at 2275. *Fiallo* is a precedent whose time has come and gone; it should be changed by Congress or the Supreme Court." (Appendix A, App. at 25).

SUMMARY OF ARGUMENT

The Plaintiff seeks a finding that she was a U.S. Citizen by birth. Using the distinction in 8 U.S.C. Section 1409(a) between "illegitimate" children of U.S. Citizen mothers and U.S. Citizen fathers as a means to take this citizenship away from her is unconstitutional.

The Texas Court legitimized the Plaintiff effective as of the date of her birth. Therefore, she was effectively legitimized prior to her eighteenth birthday.

REASONS FOR GRANTING THE PETITION

I

The distinction in 8 U.S.C. Section 1409(a) between "legitimate" and "illegitimate" children is an unconstitutional violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution as applied to the federal government through the Fifth Amendment's Due Process Clause.

The District Court did not reach the issue of constitutionality of 8 U.S.C. Section 1409(a). The Court of Appeals felt that *Fiallo v. Bell*, 430 U.S. 787 (1977) was controlling. But see *LeBrun v. Thornburgh*, 777 F. Supp. 1204 (DNJ 1991), where a well reasoned opinion, which analyzes *Fiallo v. Bell*, the Court finds the statute in question, INA Section 309 (8 U.S.C. Section 1409), is unconstitutional because of its requirement that a foreign born child of a U.S. citizen be formally legitimated by the age of twenty-one. The Court stated:

> "The discrimination in § 309 between persons on the basis of 'illegitimacy' is an archaic reminder of past discriminatory treatment of individuals in society, both in terms of the stigma attached to 'illegitimate' with which it branded the children of unwed parents, and in terms of the sex discrimination that was reflected in the law that a man could 'legitimate'

> a child whereas a woman could not. In addition to inhumane and unfair in this way, a distinction on the bases of 'legitimacy' is also an impractical distinction in today's society where unwed mothers abound, and single parenthood has become norm . . .
>
> Accordingly, the Court concludes that the distinction in the Act between the 'legitimate' and 'illegitimate' children is an unconstitutional violation of the equal protection clause . . . " *LeBrun* at 1213

It appears that the opinion of the District Court was so well reasoned that the Government did not see fit to take an appeal to the Circuit Court.

In *LeBrun*, the Court also states that the statute conditions the retention of citizenship upon an official act by the father of illegitimate children. Courts have long recognized that the rights of one cannot be made contingent upon the rights of another and an individual keeps his citizenship unless "he voluntary relinquishes it". *LeBrun* at 1221.

In *Plyler v. Doe*, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982) the Supreme Court invalidated the Texas Statute which withheld from local school districts any state funds for the education of children who were not legally admitted into the United States and which authorized local school districts to deny enrollment to such children. The Court held that the statute violated the equal protection clause of the Fourteenth Amendment, stating the children who were the Plaintiff's in the case before it "can effect neither their parents conduct nor their own status". The Court held that to punish children

for the conduct of their parents "does not conform with fundamental concepts of justice". The Court went on to cite its ruling in *Weber v. Aetna Casualty and Surety Company*, 406 U.S. 164, 175, 92 S.Ct. 1400, 1406-07, 37 L.Ed.2d 768 (1972):

> " . . . visiting condemnation on the head of an infant is illogical and injust, moreover, imposing disabilities on the . . . child is contrary to the basic concept of our system that the legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the . . . child is an ineffectual – as well as unjust – way of deterring the parent."

In *LeBrun v. Thornburgh*, at 1212, the Court says:

> "It is wrong for a father to have the unilateral ability to confer or deny citizenship to his daughter."

Mr. Miller does not wish to deny citizenship to his daughter. Under Texas law she will inherit his property as his daughter. 8 U.S.C. Section 1409(a)(4), as interpreted by the Defendant, violates the Equal Protection Clause.

In *Trimble v. Gordon*, 430 U.S. 762, 772, 97 S.Ct. 1459, 1466, 52 L.Ed.2d 31 (1977) the Court established a standard for examining statutes that distinguish between "legitimates" and "illegitimates" under which the question is whether the statute "is carefully tuned to alternative consideration". The Court took into account "the lurking problems with respect to the proof of paternity" but noted that while these problems "are not to be lightly brushed aside, . . . neither can they be made into an impenetrable barrier that works to shield, otherwise,

insidious discrimination", 430 U.S. at 771 97 S.Ct. at 1466. In *LeBrun v. Thornburgh* at 1211, it is stated:

> "The Court concludes that Section 309 is not 'carefully attuned to alternative consideration'. Even under a minimum rational standard, the distinction made in Section 309 of the statute must fail. Moreover, under the standard articulated in *Rogers v. Bellei*, the distinction is not only unreasonable and arbitrary but it is also, under the equal protection clause, unlawful." The Department of Justice did not appeal.

The Court of Appeals felt it was controlled by *Fiallo v. Bell*, 430 U.S. 787, 52 L.Ed.2d 50, but the 9th Circuit correctly points out in *Wauchope v. U.S. Department of State*, 985 F.2d 1407 (9th Cir., 1993):

> "Unlike the Government decision at issue in *Fiallo* and *Mandel*, Section 1993 represents not a congressional determination that various aliens should or should not be treated in a certain manner, but rather a decision as to who is a citizen in the first instance. This type of decision strikes us as fundamentally different from one concerning individuals as to whose alienage there exists no dispute, such as that we should utilize a more traditional (and hence more rigorous) standard of scrutiny in assessing it."

While this references another Section, the reasoning applies with equal vigor to 8 U.S.C. Section 1409.

If *Fiallo* is assumed to be directly on point,

> . . . I think it is important to underscore the extent to which *Fiallo* is out of step with the Court's current refusal to sanction "official

> action that closes a door or denies opportunity to women (or to men)" based on stereotypes or "overbroad generalizations" about men and women. *Virginia*, 116 S. Ct. at 2275. *Fiallo* is a precedent whose time has come and gone; it should be changed by Congress or the Supreme Court (Appendix A, App. at 25).

II

The distinction in 8 U.S.C. Section 1409(a) between "illegitimate" children of U.S. citizen mothers and "illegitimate" children of U.S. Citizen fathers is an unconstitutional violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution as applied to the federal government through the Fifth Amendments Due Process Clause.

> As a practical matter, there is no distinction between the rights under the Act of the legitimate and illegitimate children of American women born outside the United States and its possessions. In each instance, only the fact of the mother's U.S. citizenship at the time of the child's birth need be established. Therefore, the issue before us is whether the additional requirements imposed by section 1409(a) on the illegitimate child of an American father represent an unconstitutional denial of equal protection based on (a) the status of the child and (b) the sex of the parent. We find the Supreme Court's decision in *Fiallo* to be dispositive on both counts (Appendix A, App. at 10).

Judge Wald, in her concurring opinion concludes:

> . . . I think it is important to underscore the extent to which *Fiallo* is out of step with the

> Court's current refusal to sanction "official action that closes a door or denies opportunity to women (or to men)" based on stereotypes or "overbroad generalization" about men and women. *Virginia*, 116 S. Ct. at 2275. *Fiallo* is a precedent whose time has come and gone; it should be changed by Congress or the Supreme Court. (Appendix A, App. at 25).

However, *Fiallo v. Bell* dealt with a congressional determination that various aliens should or should not be treated in a certain manner. This case, like *Wauchope v. U.S. Department of State*, the decision at issue is who is a citizen in the first instance.

> This type of decision strikes us as fundamentally different from one concerning individuals as to whose alienage there exists no dispute, such as that we should utilize a more traditional (and hence more rigorous) standard of scrutiny in assessing it."

The Court of Appeals erred in finding *Fiallo v. Bell* was controlling since it deals with the treatment of aliens. This case is one involving citizenship.

III

8 U.S.C. Section 1409 is an unconstitutional taking away of citizenship having previously been conferred by 8 U.S.C. Section 1401(g).

Plaintiff was conferred citizenship by 8 U.S.C. Section 1401(g).

8 U.S.C. Section 1401(g) grants nationality and citizenship to a person born outside the geographical limits of the United States and its outlying possessions and one

of whom's parents is a U.S. citizen who resided in the United States prior to the person's birth.

Plaintiff meets the requirements of this Section in that she was born in the Philippines and her father, Charlie R. Miller, satisfies the parental requirement. 8 U.S.C. Section 1409, "Children born out of wedlock", takes away the grant of citizenship conferred by 8 U.S.C. Section 1401(g) unless certain things have occurred during the minority of the child: a) the person is legitimate under the law of the person's residence or domicile; b) the father acknowledges paternity of the person in writing under oath; or c) the paternity of the person is established by adjudication of a competent court. Language of 8 U.S.C. Section 1401(g) is a blanket grant of citizenship to a group which includes the Plaintiff. Then we have a later attempt in 8 U.S.C. Section 1409 to take away or limit that blanket grant and take it away from the Plaintiff because the Plaintiff is illegitimate.

8 U.S.C. Section 1409 is an unconstitutional violation of the Equal Protection Clause because it applies only when the American citizen parent is a man – the father. It doesn't apply to situations where the American citizen parent is a woman – the mother. Moreover, it requires that the acts of legitimation or "adjudication" be undertaken and completed during the minority of the child. There are two forms of constitutionally impermissible discrimination in 8 U.S.C. Section 1409 – discrimination against illegitimate children as a class as well as gender based discrimination.

In the context of this Federal Nationality Statute, the Due Process Clause of the Fifth Amendment has been

found to provide equal treatment co-extensive with that of the Equal Protection Clause. See *Boiling v. Sharpe*, 347 U.S. 497 (1954).

In defending 8 U.S.C. Section 1409, the Defendant has stated:

> "The Government also has an obvious interest in insuring that there is, in fact, a blood relationship between the child seeking American citizenship and the American citizen. Maternity is rarely a factual issue, whereas paternity is frequently placed at issue in human experience. The possibility for fraud in connection with citizenship is therefore more likely and more difficult to prove or disprove." (Page 9 of Memorandum of Point and Authorities in Support of Defendant's Motion to Dismiss.)

In her concurring opinion in the Court of Appeals, Judge Wald states:

> "Unlike the majority, I see no rational basis for a law that requires a U.S. citizen father, but not a U.S. citizen mother, to formally legitimate a child before she reaches majority as well as agree in writing to provide financial support until that date or forever forfeit the right to transmit citizenship. Rather, I believe that this requirement is based simply on the stereotyping assumption that a mother will be closer to her child born out of wedlock than a father will be to his. Unfortunately, however, I also believe that the Supreme Court's decision in *Fiallo v. Bell*, 430 U.S. 787 (1977), forecloses us from holding that the imposition of such requirements on U.S. citizen fathers but not on U.S. citizen

mothers is unconstitutional, and thus I regretfully concur in the judgment against Ms. Miller. (Concurring Opinion, P.1)" (Appendix A, App. at 15)

Judge wald concludes:

> "Notably, and regrettably, *Fiallo* treated the fear of legislating on the basis of stereotypes with a somewhat cavalier disdain, remarking in a footnote that any complaints that statutory distinctions between the illegitimate children of mothers and fathers and their illegitimate children are "based on an overbroad and outdated stereotype concerning the relationship of unwed fathers and their illegitimate children" were more appropriately addressed to Congress. Id. at 799 n.9.
>
> Fiallo is a Supreme Court decision directly on point and, as a result, we have no choice but to hold section 1409(a) constitutional. Yet I think it is important to underscore the extent to which *Fiallo* is out of step with the Court's current refusal to sanction "official action that closes a door or denies opportunity to women (or to men)" based on stereotypes of "overbroad generalizations" about men and women. *Virginia* 116 S. Ct. at 2275. *Fiallo* is a precedent whose time has come and gone; it should be changed by Congress or the Supreme Court." (Appendix A, App. at 24)

In *Albang v. Reno,* 52 F.3d 801 (9th Cir. 1995), the Court upheld a provision of the Nationality Act of 1940, 54 Stat. 1137, concerning illegitimate children, citing in support of its decision a note from *Fiallo v. Bell*:

> "The inherent difficulty of determining the paternity if a illegitimate child is compounded when it depends upon events that may have occurred many years earlier."

The question can be asked: Do these difficulties change at a given age as to the father, but not as to the mother?

> "Before the advent of reliable genetic testing, this requirement of legitimation may well have been a reasonable method for preventing fraud, as false fathers would be more likely to claim paternity once a child had reached majority and no financial responsibility to the child remained. In the absence of "clear and convincing" evidence of the blood tie, such as genetic testing, this legitimation requirement might well have been a useful proxy."

But Congress itself has acknowledged that genetic testing is extremely reliable. In the Child Support Enforcement Amendments of 1984, Congress required states, as a condition of receiving federal funds, to eliminate laws establishing statutes of limitation on proof of paternity:

> Relatively short statutes of limitation were enacted in the past in order to prevent stale claims and to protect a man from having to defend himself against a paternity action brought years after the child's birth when witnesses may have disappeared and memories may have become faulty. Recent progress is developing highly specific tests for genetic markers now permits the exclusion of over 99 percent of those wrongly accused of paternity regardless of the age of the

> child. *These advances in scientific paternity testing eliminate the rationale for placing arbitrary time limitations on the establishment of paternity for a child* and therefore the obligation to support that child.

H. REP. No. 627, 98th Cong., 1st Sess. 38 (1983) (emphasis added). Since Congress itself has acknowledged that the accuracy of genetic testing has "elimiated the rationale" for time limits on the establishment of paternity, the fear of fraud cannot be a facially legitimate and *bona fide* reason for requiring fathers – and only fathers – to take special actions to legitimate and agree to support their child by a certain date." (Appendix A, App. at 18)

The Government acknowledges that 8 U.S.C. Section 1409 makes distinctions in the ability to transmit citizenship based on gender. In *LeBrun v. Thornburgh*, 777 F. Supp. 1204 (DNJ 1991) discussed above, Judge Sarokin found that:

> "The Court concludes that the applicable law discriminates against 'illegitimate' children and thereby violates the equal protection clause of the United States constitution. The law as it then existed and as applies in this matter serviced to make the citizenship of children born out of wedlock to American fathers, particularly those serving in the armed forces, subject to the personal vagaries and consciences of their fathers. Those who choose to act with honor could confer such citizenship, and those who chose not to, could deny citizenship to their offspring. Even the dilatory father, as in this same case, could defeat the child's claim to citizenship merely by

> delaying the recognition of his responsibility, until it was to late to satisfy the residency requirements.
>
> Those who have no choice in the marital status of their parents should not be so penalized or stigmatized, and their rights to citizenship should not be dependent on the moral fortitude (or lack thereof) of one of their parents. The unfairness is exacerbated by placing such power solely in the hands of the male parent. The law was thus discriminatory in its impact upon children born out of wedlock and sexist in making citizenship dependent upon the acquiescence of the male parent only." *LeBrun v. Thornburgh*, F. Supp. at 1206.

In addition to *LeBrun v. Thornburgh*, the United States 9th Circuit Court of Appeals, declared unconstitutional a nationality law which also drew unlawful distinctions among transmitting citizenship on the basis of gender.

In a *Wauchope v. Department of State*, 985 F.2d 1407 (1993) hereinafter cited as *Wauchope*, Section 1993 of the Revised Statutes of 1874, allowing American citizen males but not American citizen females, the right to pass on their citizenship to foreign born offspring, the Court found that this statute's impermissible gender based discrimination was constitutionally infirmed as a violation of the equal protection component of the 5th Amendment's due process clause. See also *Elias v. Department of State*, 721 F. Supp. 243 (ND. Cal 1981), where, just as in the later *Wauchope*, the District Court found unlawful gender-based discrimination. The Justice Department abandoned the appeal of *Elias v. Department of State*.

IV

8 U.S.C. Section 1409 is unconstitutional under the rational basis test.

Illegitimate children are not recognized as a suspect class and therefore the strict scrutiny standard of equal protection analysis does not apply.

In *Wauchope* the 9th Circuit applied the rational basis test to determine whether there was a factually legitimate and *bona fide* reason for the discrimination. The Government cites *Fiallo v. Bell*, 430 U.S. 787 (1977) as a proposed factually legitimate and *bona fide* reason for the gender discrimination contained in 8 U.S.C. Section 1409. *Fiallo v. Bell* may be distinguished on the basis that it represented a challenge to the legal immigration system over which, it has long been conceded, Congress has almost plenary power. See *Runnett v. Schultz*, 901 F.2d 782, 787 (9th Cir. 1990). In the instant case, 8 U.S.C. Section 1401(g) actually conferred citizenship on the daughter, subject to the conditions subsequent of legitimation prior to her eighteenth birthday found in 8 U.S.C. Section 1409. The fathers' attempt in *Fiallo v. Bell* to provide immigration benefits for children who were indisputably aliens is clearly distinguishable.

The legislative history does not articulate any Congressional purpose for the "take away" provision in 8 U.S.C. Section 1409 directed against illegitimate children. The Government argues that the problem of proof should be recognized as a rational basis for the legitimation provisions of 8 U.S.C. Section 1409. The Government's proof rationale fails as either a factually legitimate or *bona fide* reason to justify the unequal treatment. The proof of

fatherhood proposal, if recognized, would be constitutionally infirmed as underinclusive as to a Plaintiff who was recognized as being the illegitimate daughter and, in fact, has been legitimated under the laws of the State of Texas. The Court in *Wauchope* noted that:

> " . . . Courts 'need not, in equal protection cases except at face value assertions of legislative purposes, when . . . the asserted purpose could not have been the goal of legislation.' " *Weinberger v. Wiesenfeld*, 420 U.S. 636, 648 n.16 (1975) " '[W]e [must be] careful not to attribute to the [government] purposes which it cannot reasonably be understood to have entertained.' " *Christian Science Reading Room v. City and County of San Francisco*, 792 F.2d 124, 124 (9th Cir. 1986) quoting *Delaware River Basin Commission v. Bucks County Water & Sewer Authority*, 641 F.2d 1087, 1097 (3rd Cir. 1981) cer. denied, 479 U.S. 1066 (1987) *Wauchope* 985 F.2d at 1415.

Therefore, consistent with the 9th Circuit's constitutional analysis in *Wauchope* there is no rational basis and no factually legitimate and *bona fide* reason that exists to justify the legitimation requirement of 8 U.S.C. Section 1409.

Judge Wald seems to agree, stating:

> "Once parentage has been definitively established, there is no reason to require fathers, but not mothers, to take the additional step of formal legitimation and a written agreement to provide financial support before a child's 18th birthday." (Appendix A, App. at 18)

V

The Voluntary Paternity Decree legitimizes the Plaintiff effective as of the date of birth. Therefore, she was effectively legitimized prior to her eighteenth birthday.

On July 27, 1992, the 321st Judicial District court of Smith County, Texas in Cause No. 92-1491-D, *In the Interest of Lorelyn Penero Miller,* AKA Lorena Penero Miller, entered a voluntary paternity decree (Appendix E, App. at 37) which legitimated the Plaintiff effective retroactivity to her date of birth. This fact has been recognized by employees of the Defendant (Appendix D, App. at 36 and Appendix C, App. at 33) and it complies with the requirements of 8 U.S.C. Section 1409(a)(4) which provides that while a person is under the age of eighteen years, or prior to the 1986 amendments, under the age of twenty-one years:

> "(A) the person is legitimated under the law of the person's residence or domicile (B) the father acknowledges the paternity of the person in writing under oath, or (C) the paternity of the person is established adjudication of a competent court."

The effect of the action above the Court was to establish the paternity of the Plaintiff while she was under the age of eighteen years since it established her paternity at the time of her birth.

Thus it is not necessary for the Court to declare 8 U.S.C. Section 1409 unconstitutional but only to interpret its provisions as they were interpreted by the Passport and Citizenship Unit of the American Embassy, Manila,

Philippines in their letter dated August 11, 1992 (Appendix D, App. at 37).

CONCLUSION

The Petitioner respectfully requests the Court to Grant her petition, issue a writ of certiorari, reverse in part the judgment of the District of Columbia Circuit of the Court of Appeals and remand with instructions.

Respectfully submitted,

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APPENDIX

Appendix A Opinion of Court of Appeals for District of Columbia Circuit .....App. 1

Appendix B Memorandum Opinion and Order U.S. District Court .....App. 26

Appendix C Decision, Acting Director, Office of Citizen Consular Services.....App. 32

Appendix D Letter Chief Passport and Citizenship Unit, U.S. Embassy Manila.....App. 36

Appendix E Voluntary Paternity Decree .....App. 37

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued November 21, 1995 Decided October 8, 1996

No. 94-5160

LORELYN PEÑERO MILLER, APPELLANT

v.

WARREN CHRISTOPHER, SECRETARY OF STATE, APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 93cv01182)

Donald R. Patterson argued the cause and filed the briefs for appellant.

John O. Birch, Assistant United States Attorney, with whom *Eric H. Holder, Jr.*, United States Attorney, and *R. Craig Lawrence*, Assistant United States Attorney, were on the brief, argued the cause, for appellee. *John D. Bates* and *Douglas A. Wickham*, Assistant United States Attorneys, entered appearances for appellee.

Before WALD and HENDERSON, *Circuit Judges*, and BUCKLEY,* *Senior Circuit Judge*.

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* At the time of oral argument, Judge Buckley was a circuit judge in active service. He assumed senior status on September 1, 1996.

Opinion for the court filed by *Senior Circuit Judge* BUCKLEY.

Separate opinion concurring in the judgment filed by *Circuit Judge* WALD.

BUCKLEY, *Senior Circuit Judge*: Lorelyn Peñero Miller, a nonresident alien, appeals the dismissal of her complaint for lack of Article III standing and challenges the constitutionality, on equal protection grounds, of a statute governing the citizenship of an illegitimate child born abroad of an American father and an alien mother. We hold that Ms. Miller had standing to bring this action; but in light of controlling Supreme Court precedent, we conclude that the challenged statute is constitutional.

I. BACKGROUND

Ms. Miller was born in Angeles City, Republic of the Philippines, on June 20, 1970. Her birth certificate states that Ms. Miller was illegitimate; and it identifies her mother as Luz Peñero, a Filipino national. It does not identify her father. Ms. Miller claims that she is the daughter of Charlie R. Miller, a U.S. citizen, who, at the time of her birth, was a member of the U.S. military stationed in the Philippines. Mr. Miller and Luz Peñero have never married.

In February 1992, eight months after Ms. Miller's 21st birthday, she applied to the U.S. State Department for registration as a United States citizen. In her complaint, Ms. Miller stated that she was "a . . . resident of the Angeles City, Republic of the Philippines." First

Amended Complaint at 1. The record does not reveal whether she has ever been to the United States.

In 1992, the State Department denied Ms. Miller's application for U.S. citizenship on the ground that she failed to meet the requirements of the provision of the Immigration and Naturalization Act of 1952 ("Act"), 8 U.S.C. § 1409(a), which applies to persons born out of wedlock outside the United States of an American father and an alien mother. As amended in 1988, section 1409(a) provides that such a child will be deemed a U.S. citizen as of the date of birth if:

> (1) a blood relationship between the person and the father is established by clear and convincing evidence,
>
> (2) the father had the nationality of the United States at the time of the person's birth,
>
> (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
>
> (4) while the person is under the age of 18 years –
>
> > (A) the person is legitimated under the law of the person's residence or domicile,
> >
> > (B) the father acknowledges paternity of the person in writing under oath, or
> >
> > (C) the paternity of the person is established by adjudication of a competent court.

8 U.S.C. § 1409(a) (1994). Because she falls within a narrow statutory age bracket, Ms. Miller would be able to satisfy the requirement of section 1409(a)(4) on a showing

that she was legitimated prior to the age of 21, rather than 18, as provided under the section before it was amended in 1986. *See* 8 U.S.C. § 1409 note (Effective Date of 1986 Amendment). The State Department found that Ms. Miller failed to meet the requirements of subsections (3) and (4) of section 1409(a). *See Miller v. Christopher*, No. 93-1182 (D.D.C. Apr. 29, 1994) ("Mem. Op.") at 3.

On July 27, 1992, Mr. Miller obtained a Voluntary Paternity Decree from a Texas state court, establishing that he was Ms. Miller's biological father. Ms. Miller submitted that document to the State Department and requested reconsideration of its denial of her application. Ms. Miller then sought judicial review of her claim in the United States District Court for the Eastern District of Texas. In that action, she named the Secretary of State ("Secretary") as defendant. Ms. Miller's complaint charged that the statutory prerequisites to her application for U.S. citizenship contained in 8 U.S.C. § 1409(a) violated the Constitution's equal protection principles because of the statute's distinctions between legitimate and illegitimate children and between men and women. Complaint ¶ XII(1). Ms. Miller sought a declaration that she "is a citizen of the United States and is entitled to all the rights and privileges of citizens of the United States including a right to possess a passport." First Amended Complaint ¶ XVII(2).

The Secretary moved to dismiss the complaint or, in the alternative, to transfer venue. Thereupon, Ms. Miller amended the complaint, adding Mr. Miller, a resident of Texas, as co-plaintiff. On June 2, 1993, the district court in Texas dismissed Mr. Miller's claims for lack of standing and ordered that the case be transferred to the United

States District Court for the District of Columbia, where venue, based on the Secretary's residence, was proper. *Miller v. Christopher*, C.A. No. 6: 93 CV 39 (E.D. Tex. June 2, 1993). Upon transfer, the Secretary renewed his motion to dismiss. By Memorandum Opinion and Order dated April 29, 1994, the district court granted the Secretary's motion to dismiss on the basis that Ms. Miller lacked standing. Mem. Op. at 5.

Ms. Miller presents three core issues on appeal. She argues, first, that the district court erred in finding that she lacked standing; second, that section 1409(a) violates the Equal Protection Clause of the Fourteenth Amendment; and, finally, that, even if the court upholds the constitutionality of section 1409(a), she meets its requirements because the Texas state court paternity decree retroactively legitimated her as of the date of her birth.

We address these arguments in turn.

II. Discussion

A. Standing

Article III of the United States Constitution requires plaintiffs invoking federal jurisdiction to establish three elements of standing:

> First, the plaintiff must have suffered an injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be fairly

> trace[able] to the challenged action of the defendant, and not th[e] result [of] the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (internal quotation marks, citations, ellipses, and footnote omitted).

As the existence of the first two elements is conceded, the issue before us involves the third – whether Ms. Miller's injury is redressable by a favorable decision. Although the district court found that Ms. Miller may have suffered an injury that was caused by the conduct of the Secretary, it concluded that Ms. Miller did not have standing to bring this action. Specifically, the court held that she had failed to "demonstrate any redressable injury" because, under *INS v. Pangilinan*, 486 U.S. 875 (1988), federal courts do not have the power to "grant citizenship." Mem. Op. at 5 (citing *Pangilinan*, 486 U.S. at 884). The court reasoned that

> [e]ven if this court should conclude that 8 U.S.C. § 1409(a) is unconstitutional, this court could not grant citizenship to plaintiff [because, under *Pangilinan*,] this could only be accomplished by legislative action. Only Congress has the power to confer citizenship to persons not constitutionally entitled to citizenship.

Id.

We respectfully disagree. In determining whether an injury is redressable, a court must ask "whether a plaintiff's injury would be likely to be redressed *if the requested relief were granted.*" *In re Thornburgh*, 869 F.2d 1503, 1511 (D.C. Cir. 1989) (emphasis in original). Ms. Miller did not request the court to *grant* her citizenship; rather, she requested that the court declare section 1409(a) unconstitutional and merely make a *finding* under the general rule applicable to persons born outside of the United States, 8 U.S.C. § 1401(g), that she was a U.S. citizen from birth. Section 1401(g) provides, in pertinent part:

> The following shall be nationals and citizens of the United States at birth:
>
> * * *
>
> (g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years. . . .

8 U.S.C. § 1401(g) (1994).

We agree with Ms. Miller that, if the district court had held section 1409(a) to be unconstitutional, it could have found that she was a U.S. citizen pursuant to section 1401(g). Such a finding would not have violated *Pangilinan's* proscription on the exercise of judicial equitable power to confer U.S. citizenship in the absence of legislative authority. Consequently, we hold that Ms. Miller has standing to pursue her claim.

B. Constitutionality of Section 1409

Ms. Miller challenges section 1409(a) on the ground that it violates the Equal Protection Clause of the Fourteenth Amendment, as applied to the federal government through the Fifth Amendment's Due Process Clause. *See Bolling v. Sharpe*, 347 U.S. 497, 499 (1954). Specifically, Ms. Miller claims that the statute denies equal protection by illegally distinguishing between: (a) legitimate versus illegitimate children, (b) the illegitimate children of men versus those of women, and (c) the rights of the father of an illegitimate child versus those of its mother. Ms. Miller's last claim is based upon Mr. Miller's rights as a parent. Because he is not a party to this appeal, however, the claim is not properly before the court. *See Ablang v. Reno*, 52 F.3d 801, 804 n.4 (9th Cir.1995) (holding that non-parties' claims could not be asserted by proxy through parties).

Before addressing the substance of Ms. Miller's claims, we must first determine the level of scrutiny we apply to the statute. The Supreme Court has recognized that "the power to expel or exclude aliens [is] a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Shaughnessy v. Mezei*, 345 U.S. 206, 210 (1953). Acknowledging Congress's plenary authority to prescribe rules for the admission and exclusion of aliens, the Supreme Court has found it

> important to underscore the limited scope of judicial inquiry into immigration legislation. Th[e] Court has repeatedly emphasized that over no conceivable subject is the legislative

> power of Congress more complete than it is over the admission of aliens.

Fiallo v. Bell, 430 U.S. 787, 792 (1977) (internal quotation marks and citations omitted). In *Kleindienst v. Mandel*, 408 U.S. 753 (1972), the Court articulated a standard of review for First Amendment challenges in the immigration context. It held that the exercise of such power will be upheld if based on a "facially legitimate and bona fide reason." *Id.* at 770. Five years later, when faced with an equal protection challenge to an immigration statute's " 'double-barreled' discrimination based on sex and illegitimacy," *Fiallo*, 430 U.S. at 794, the Court found "no reason to review the broad Congressional policy choice at issue . . . under a more exacting standard than was applied in *Kleindienst*. . . . " *Id.* at 795. In determining whether a facially legitimate and bona fide reason supports a statute, we note that "Congress need not have stated its rationale for the distinction in the text or legislative history." *Ablang*, 52 F.3d at 805.

We now determine whether there is a facially legitimate and bona fide reason for the statute at issue here. Under the Immigration and Nationality Act, the burdens imposed upon illegitimate children are greater than those imposed upon legitimate children; and the burdens imposed upon the illegitimate children of American men are greater than those imposed upon the illegitimate children of American women. Specifically, under section 1401(g), *every legitimate* child born outside the United States "of parents one of whom is an alien, and the other a citizen of the United States" who meets certain residency requirements, is a citizen of the United States at birth. 8 U.S.C. § 1401(g). The provisions of that section,

however, do not apply to the illegitimate child born abroad of a United States citizen and an alien who fails to meet the requirements set forth in section 1409. Similarly, while an illegitimate child born outside the United States of an American mother need only establish that the mother was a citizen at the time of its birth and has met a minimal residency requirement, *see id.* § 1409(c), the illegitimate child of an American father must establish two additional facts: it must prove both a *biological* relationship with the father, *see id.* § 1409(a)(1), *and* the existence, prior to the child's eighteenth birthday, of a *personal* relationship between them as evidenced by (a) the father's written agreement to provide it with financial support until it reaches that age and (b) the father's voluntary acknowledgement of his paternity or a court adjudication confirming the fact, *see id.* §§ 1409(a)(3) & (4).

As a practical matter, there is no distinction between the rights under the Act of the legitimate and illegitimate children of American women born outside the United States and its possessions. In each instance, only the fact of the mother's U.S. citizenship at the time of the child's birth need be established. Therefore, the issue before us is whether the additional requirements imposed by section 1409(a) on the illegitimate child of an American father represent an unconstitutional denial of equal protection based on (a) the status of the child and (b) the sex of the parent. We find the Supreme Court's decision in *Fiallo* to be dispositive on both counts.

That case involved a constitutional challenge to another section of the Act, 8 U.S.C. § 1101(b), which, like section 1409, draws distinctions among alien children on

the basis of legitimacy and the sex of their parents. In relevant part, the section reads as follows:

> The term "child" means an unmarried person under twenty-one years of age who is –
>
> (A) a legitimate child; [or]
>
> * * *
>
> (D) an illegitimate child . . . on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father *if the father has or had a bona fide parent-child relationship with the person.* . . .

8 U.S.C. §§ 1101(b)(1)(A) & (D) (emphasis added). Section 1101(b) also includes a legitimated child within the definition but only if "such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of legitimation," *id.* § 1101(b)(1)(C) – conditions that are comparable to those imposed by sections 1409(a)(3) and (4). As in this case, the appellants in *Fiallo* claimed that the statute "denied them equal protection by discriminating against natural fathers and their illegitimate children 'on the basis of the father's marital status, the illegitimacy of the child, and the sex of the parent without either compelling or rational justification.' " 430 U.S. at 791 (citation omitted).

The Court observed that in enacting section 1101(b),

> Congress was specifically concerned with the relationship between a child born out of wedlock and his or her natural mother, and the legislative history . . . reflects an intentional choice not to provide preferential immigration

> status by virtue of the relationship between an illegitimate child and his or her natural father.

Id. at 797. The Court acknowledged that the provisions of the section "ma[de] it more difficult for illegitimate children and their natural fathers to be reunited in this country than . . . for illegitimate children and their natural mothers." *Id.* at 798. It pointed out, however, that while these were admittedly the consequences of the congressional decision not to accord preferential status to this particular class of aliens, . . . the decision nonetheless remain[ed] one solely for the responsibility of the Congress and wholly outside the power of this Court to control. Congress obviously ha[d] determined that preferential status [was] not warranted for illegitimate children and their natural fathers, perhaps because of a perceived absence in most cases of close family ties as well as a concern with the serious problems of proof that usually lurk[ed] in paternity determinations. In any event, it [was] not the judicial role in cases of this sort to probe and test the justifications for the legislative decision.

Id. at 798-99 (internal quotation marks, citations, and footnotes omitted). The Court then held that the challenged provisions "are not unconstitutional by virtue of the exclusion of the relationship between an illegitimate child and his natural father from the preferences accorded by the Act" to others. *Id.* at 800.

While recent developments in DNA technology may have removed many of the difficulties that once plagued the proof of paternity, as required by section 1409(a)(1), in light of that holding and the Court's reference to "the

perceived absence of close family ties" between illegitimate children and their natural fathers as well as to the problems of proof in paternity determinations, we see no basis for concluding that section 1409(a) is unconstitutional. Rather, we conclude, as did the Ninth Circuit, that "a desire to promote early ties to this country and to those relatives who are citizens of this country is not a[n ir]rational basis for the requirements made by" sections 1409(a)(3) and (4). *Ablang*, 52 F.3d at 806. Furthermore, we find it entirely reasonable for Congress to require special evidence of such ties between an illegitimate child and its father. A mother is far less likely to ignore the child she has carried in her womb than is the natural father, who may not even be aware of its existence. As the Court has recognized, "mothers and fathers of illegitimate children are not similarly situated." *Parham v. Hughes*, 441 U.S. 347, 355 (1979). "The putative father often goes his way unconscious of the birth of the child. Even if conscious, he is very often totally unconcerned because of the absence of any ties to the mother." *Id.* at 355 n.7 (internal quotation marks and citation omitted). This sex-based distinction seems especially warranted where, as here, the applicant for citizenship was fathered by a U.S. serviceman while serving a tour of duty overseas. Counsel for Ms. Miller conceded, during oral argument, that Ms. Miller and her father had not had an ongoing parental relationship while she was a minor, although the two appear to have developed one since then. But even if Ms. Miller had argued, as did the appellants in *Fiallo*, that the requirements of section 1409(a) were "based on an overbroad and outdated stereotype concerning the relationship of unwed fathers and their illegitimate children,"

Fiallo, 430 U.S. at 799 n.9, the Supreme Court specifically noted that "this argument should be addressed to the Congress rather than the courts." *Id.*

C. Application of Section 1409(a)

Ms. Miller contends that, even assuming the constitutionality of section 1409(a), the Texas state court's paternity decree applies retroactively to her birth, and that she therefore satisfies the requirement of section 1409(a). We are unpersuaded. Ms. Miller obtained the paternity decree after she turned 21; the statute, however, requires legitimation or establishment of paternity "*while* the person is under the age of" 18 or, as in her case, 21, depending on whether the previous or amended version of the statute applies. To allow Ms. Miller to gain the retroactive benefit of a state court judgment would undercut Congress's clearly stated requirements and would have the effect of establishing citizenship in ways inconsistent with federal legislation. Because an applicant must satisfy each of the requirements of section 1409(a)(1)-(4), and Ms. Miller has failed to satisfy those of subsections (a)(3) and (4), the State Department properly denied her application for citizenship.

III. CONCLUSION

While the district court erred in holding that Ms. Miller lacked standing to bring her claim, we reject her constitutional challenges to section 1409(a) and find that she failed to meet its requirements. We therefore remand

the case to the district court for further proceedings consistent with this opinion.

So ordered.

WALD, *Circuit Judge, concurring in the judgment:* Charlie R. Miller obtained an order from a state court in Smith County, Texas on July 27, 1992, establishing paternity of his daughter, Lorelyn. If he had obtained the decree on June 19, 1991, the day before Lorelyn's 21st birthday, she would now be a citizen of the United States. But because of his delay of little more than a year and a month, she is not a citizen – though there is *no* question that Miller is her father.[1] Unlike the majority, I see no rational basis for

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[1] As the majority notes, Lorelyn Miller fell into a narrow statutory age bracket the members of which were allowed to elect to have the version of 8 U.S.C. § 1409(a) that was in force at the time of the 1986 amendments apply to their citizenship applications. *See* 8 U.S.C. § 1409 *note* (Effective Date of 1986 Amendment). This version of section 1409(a) provided that a child born out of wedlock to a U.S. citizen father was a U.S. citizen at birth if the father met certain residency requirements and "the paternity of such child is established while such child is under the age of twenty-one years by legitimation." *See* 8 U.S.C. § 1409(a) *note* (Amendments). The government does not appear to dispute the fact that Charlie Miller met the relevant residency requirements and thus, under the version of section 1409(a) applicable to her, Lorelyn Miller was only required to have established her paternity by legitimation the age of twenty-one in order to qualify for citizenship. Since the government also does not dispute that the Texas state court order constituted legitimation under the terms of this version of section 1409(a), I assume that this order would be sufficient to support Lorelyn Miller's claim for citizenship had she obtained it before she turned 21. I have couched the following discussion, however, in terms of the requirements contained in the current

a law that requires a U.S. citizen father, but not a U.S. citizen mother, to formally legitimate a child before she reaches majority as well as agree in writing to provide financial support until that date or forever forfeit the right to transmit citizenship. Rather, I believe that this requirement is based simply on the stereotyping assumption that a mother will be closer to her child born out of wedlock than a father will be to his. Unfortunately, however, I also believe that the Supreme Court's decision in *Fiallo v. Bell*, 430 U.S. 787 (1977), forecloses us from holding that the imposition of such requirements on U.S. citizen fathers but not on U.S. citizen mothers is unconstitutional, and thus I regretfully concur in the judgment against Ms. Miller.

As the majority notes, under *Fiallo* we must uphold the requirement that a U.S. citizen father must legitimize and agree to provide financial support for his child before the age of majority to transmit citizenship, even though no parallel burden is placed on U.S. citizen mothers, if we find that there is a "facially legitimate and bona fide reason" to distinguish between U.S. citizens in this fashion. *Id.* at 795; *Kleindienst v. Mandel*, 408 U.S. 753, 770

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version of section 1409(a), which, as the majority describes, require the illegitimate child of a U.S. citizen father to "prove both a *biological* relationship with the father, and the existence, prior to the child's eighteenth birthday, of a *personal* relationship between them, as evidenced by (a) the father's written agreement to provide it with financial support until it reaches that age and (b) the father's voluntary acknowledgment of his paternity or a court adjudication confirming the fact." Majority opinion ("Maj. op.") at 8.

(1972).[2] The majority offers two rationales for the different treatment afforded men and women under the statute, both drawn from *Fiallo*. The first is that this approach will reduce fraudulent claims because there will generally be more reliable proof of maternity than paternity. The second is that distinguishing between the mothers and fathers of illegitimate children reflects the " 'perceived absence of close family ties' between illegitimate children and their natural fathers." Maj. op. at 10 (quoting *Fiallo*, 430 U.S. at 799). In the majority's language, " 'a desire to promote early ties to this country

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[2] Although my main complaint here is with *Fiallo*'s acceptance of stereotypes as a basis for distinguishing between the sexes, I pause to note that *Fiallo*'s application of the "facially legitimate and bona fide reason" standard to all immigration legislation, no matter how directly or severely that legislation interferes with fundamental rights of U.S. citizens, is also outdated. This standard may have been appropriate when the Court was moving from its longstanding refusal to subject immigration legislation to any scrutiny whatever to the position that immigration legislation is not immune from review. But this transition having been accomplished, it would seem more in keeping with current Supreme Court doctrine to use a standard that grants great weight to Congress' power over immigration yet also takes into account the degree to which a particular immigration law restricts the constitutional rights of U.S. citizens and the importance of the rights affected. *Cf. 44 Liquormart Inc. v. Rhode Island*, 116 S. Ct. 1495, 1507 (1996) (an absolute ban on the dissemination of truthful, nonmisleading commercial speech is subject to more rigorous review than a regulation that targets deceptive sales practices or leaves open alternative means of communication); *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (abortion restrictions should be judged by an undue burden standard that takes account of the degree to which a woman's right to terminate her pregnancy is infringed).

and to those relatives who are citizens of this country is not a[n ir]rational basis for the requirements made by' sections 1409(a)(3) and (4)." Maj. op. at 10 (quoting *Ablang v. Reno*, 52 F.3d 801, 806 (9th Cir.1995)).

There is nothing inherently illegitimate about either of these two goals. I am on common ground with the majority in believing that the government has a *bona fide* interest in ensuring that the children on which it confers citizenship are in fact the children of U.S. citizen parents. I also agree that requiring some sort of minimal "family ties" between parent and child, as well as fostering an early connection between child and country, is rational government policy. But these goals, however worthy, do not justify the imposition of a set of procedural hurdles on men – and only men – who wish to confer citizenship on their children.

Clearly the United States should not be in the business of conferring citizenship on people whose parentage is uncertain. *See Gomez v. Perez*, 409 U.S. 535, 538 (1973) (discussing "lurking problems with respect to proof of paternity"). But this problem, as the majority appears to concede, is satisfactorily addressed by the requirement of "clear and convincing evidence" of the father's paternity before a child can be declared a U.S. citizen. 8 U.S.C. § 1409(a)(1). Once parentage has been definitively established, there is no reason to require fathers, but not mothers, to take the additional step of formal legitimation and a written agreement to provide financial support before a child's 18th birthday. Before the advent of reliable genetic testing, this requirement of legitimation may well have been a reasonable method for preventing fraud, as false fathers would be more likely to claim paternity

once a child had reached majority and no financial responsibility to the child remained. In the absence of "clear and convincing" evidence of the blood tie, such as genetic testing, this legitimation requirement might well have been a useful proxy.

But Congress itself has acknowledged that genetic testing is extremely reliable. In the Child Support Enforcement Amendments of 1984, Congress required states, as a condition of receiving federal funds, to eliminate laws establishing statutes of limitation on proof of paternity:

> Relatively short statutes of limitation were enacted in the past in order to prevent stale claims and to protect a man from having to defend himself against a paternity action brought years after the child's birth when witnesses may have disappeared and memories may have become faulty. Recent progress in developing highly specific tests for genetic markers now permits the exclusion of over 99 percent of those wrongly accused of paternity regardless of the age of the child. *These advances in scientific paternity testing eliminate the rationale for placing arbitrary time limitations on the establishment of paternity for a child* and therefore the obligation to support that child.

H. REP. NO. 527, 98th Cong., 1st Sess. 38 (1983) (emphasis added). Since Congress itself has acknowledged that the accuracy of genetic testing has "eliminate[d] the rationale" for time limits on the establishment of paternity, the fear of fraud cannot be a facially legitimate and *bona fide* reason for requiring fathers – and only fathers – to take

special actions to legitimate and agree to support their child by a certain date.

As a result, the majority places greater weight on the argument that requiring U.S. citizen fathers, but not U.S. citizen mothers, to legitimize and agree to give financial support to their children before they turn 18 fosters close and early ties between illegitimate children, the United States, and the relatives of the children. According to the majority, it is "entirely reasonable for Congress to require special evidence of such ties between an illegitimate child and its father. A mother is far less likely to ignore the child she has carried in her womb than is the natural father." Maj. op. at 10. The majority seems to believe that there automatically will be closer and earlier "family ties" between a mother and her illegitimate child than between a father and his illegitimate child. I agree with the majority that traditionally mothers more frequently have assumed primary responsibility for illegitimate children, although it is a subject of some debate whether this phenomenon is traceable as much to socialization and sexism as to biological necessity. But there is a world of difference between noting that men and women often fill different roles in society and using these different roles as the justification for imposing inflexible legal restrictions on one sex and not the other. To do the latter is to govern on the basis of stereotyping assumptions, an approach that has been repeatedly criticized by the Supreme Court. *See, e.g., Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 725 (1982) ("Care must be taken in ascertaining whether the statutory objective itself reflects archaic and stereotypic notions"); *Duren v. Missouri*, 439 U.S. 357, 369 (1979) (state's practice of excluding women from jury

venire violated equal protection where it was justified only by stereotype of "safeguarding the important role played by women in home and family life"). As the Supreme Court said in *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, ___, 114 S. Ct. 1419, 1422 (1994):

> Today we reaffirm what, by now, should be axiomatic: Intentional discrimination on the basis of gender by state actors violates the Equal Protection Clause, particularly where, as here, the discrimination serves to ratify and perpetuate invidious, archaic, and overbroad stereotypes about the relative abilities of men and women.

Just last term, in reviewing the exclusion of women from the Virginia Military Institute, the Court reiterated that any governmental justification for official action that distinguishes between men and women "must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females." *United States v. Virginia*, ___ U.S. ___, ___, 116 S. Ct. 2264, 2275 (1996). While it is true that these cases represent instances where legislation was reviewed under heightened scrutiny, the tenor of the Court's castigation of gender stereotypes makes it highly doubtful that such stereotypes can ever serve as justifications for governmental action restricting the rights of citizens.[3]

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[3] In a recent speech, then-Solicitor General Drew S. Days explained that the United States did not seek certiorari in *Wauchope*, a Ninth Circuit case holding that the pre-1934 rule granting citizenship to the foreign-born children of U.S. citizen fathers but not to the foreign-born children of U.S. citizen mothers was unconstitutional, because it was convinced that the

Of particular significance to this case, the Court has been unwilling to countenance the use of stereotypes to justify lasting distinctions between the mothers and fathers of illegitimate children. In *Caban v. Mohammed*, 441 U.S. 380 (1979), the Court struck down a New York statute that required the consent of a mother and not of a father for the adoption of an illegitimate child, arguing that stereotypes regarding the relationships mothers and fathers will have with their illegitimate children are only acceptable, if at all, in the child's infancy: "Even if unwed mothers as a class were closer to their newborn infants, this generalization concerning parent-child relations would become less acceptable as a basis for legislative distinctions as the age of the child increased." *Id.* at 389. Subsequent case law has established that as the child gets older the extent of the mother's or father's relationship with the child becomes the only relevant basis on which to distinguish between them: "If one *parent* has an established custodial relationship with the child and the other *parent* has either abandoned or never established a relationship, the Equal Protection Clause does not prevent a state from according the two *parents* different legal rights." *Lehr v. Robertson*, 463 U.S. 248, 267-68 (1983).[4]

Ninth Circuit's decision was "consistent with modern developments in the Supreme Court's jurisprudence concerning statutory distinctions based on gender." Drew S. Days, Lecture, *The Solicitor General and the American Legal Ideal*, 49 SMU L.Rev. 73, 81 (1995); *Wauchope v. United States Dep't of State*, 985 F.2d 1407, 1416 (9th Cir.1993).

[4] The majority cites *Parham v. Hughes*, 441 U.S. 347 (1979), for the proposition that the "mothers and fathers of illegitimate children are not similarly situated." *Id.* at 355. *Parham* was a plurality opinion upholding a Georgia law that allowed only mothers of illegitimate children and fathers who had legitimated their children to sue for the wrongful death of the child. The crucial link in the Court's reasoning was the fact that Georgia provided that *only* the father could legitimize a child; the Court argued that the requirement that a father can only bring a wrongful death action if he has legitimated his child "does not reflect any overbroad generalizations about men as a class, but rather the reality that in Georgia only a father can by unilateral action legitimate an illegitimate child." *Id.* at 356. In other words, the Court explicitly based its finding that the mothers and fathers of illegitimate children are not similarly situated on the fact that under Georgia law only a father can legitimate an illegitimate child. *Id.* at 355-56. Of course, the real question then becomes whether a statute that allows fathers but not mothers to legitimate their illegitimate children is unacceptably based on stereotypes, but the Court refused to consider the constitutionality of the legitimization restriction on the grounds that a challenge to its constitutionality was not before the court. *Parham*, 441 U.S. at 355. Here, however, there is no underlying additional statute that excuses or explains the distinctions drawn between the U.S. citizen mothers and fathers of illegitimate children, and thus *Parham*'s holding appears irrelevant.

Needless to say, here we have a statute that distinguishes between fathers and mothers of illegitimate children a substantial period – 18 years – after birth, and does so in addition to requiring clear and convincing evidence of paternity. We also have a statute that accords different treatment to U.S. citizen mothers who fail to establish relationships with their illegitimate children until after they turn 18 than to U.S. citizen fathers in the same situation; the mothers can transmit their citizenship to their children despite the lack of an early relationship, whereas the fathers cannot.

As a general rule, of course, Congress is free to promote close family ties by ensuring that citizenship is conferred only on children who have at least minimal contact with citizen parents during their early and formative years. Thus, even though the line is arbitrary, I see no problem with a requirement that the U.S. citizen parent take some action to acknowledge parentage or responsibility for a child before the child reaches age 18. But this putative interest provides absolutely no basis for requiring fathers, and only fathers, to formally declare parentage and agree to provide financial support before a child reaches age 18. Such a distinction clearly derives from the stereotyping assumption that mothers automatically will be close to their illegitimate children whereas fathers will not, and under current jurisprudence such an assumption should not be considered a facially legitimate or *bona fide* reason for government action. In *Fiallo*, however, the Court held that the exact same assumption that fathers will not be close to their illegitimate children *was* a facially legitimate and *bona fide* reason for distinguishing between the mothers and fathers of illegitimate children in immigration legislation. *Fiallo*, 430 U.S. at 799. Notably, and regrettably, *Fiallo* treated the fear of legislating on the basis of stereotypes with a somewhat cavalier disdain, remarking in a footnote that any complaints that statutory distinctions between the illegitimate children of mothers and fathers and their illegitimate children are "based on an overbroad and outdated stereotype concerning the relationship of unwed fathers and their illegitimate children" were more appropriately addressed to Congress. *Id.* at 799 n.9.

Fiallo is a Supreme Court decision directly on point and, as a result, we have no choice but to hold section 1409(a) constitutional. Yet I think it is important to underscore the extent to which *Fiallo* is out of step with the Court's current refusal to sanction "official action that closes a door or denies opportunity to women (or to men)" based on stereotypes or "overbroad generalizations" about men and women. *Virginia*, 116 S. Ct. at 2275. *Fiallo* is a precedent whose time has come and gone; it should be changed by Congress or the Supreme Court.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LORELYN PENERO MILLER, Plaintiff, v. WARREN CHRISTOPHER, SECRETARY OF STATE, Defendant.	)	Civil Action No. 93-1182 (RCL)

MEMORANDUM OPINION AND ORDER

(Filed Apr. 29, 1994)

This matter comes before the court on defendant's motion to dismiss the complaint pursuant to 12(b)(1) of the Federal Rules of Civil Procedure. Upon consideration of the filings of counsel and the relevant law, defendant's motion to dismiss is GRANTED in accordance with this Memorandum Opinion and Order. This case is hereby DISMISSED.

Plaintiff, Lorelyn Penero Miller, was born in the Republic of the Philippines on June 20, 1970. Her mother is a Philippine national, and her father, Charlie Miller, is an American citizen.[1] The birth record reflects, however,

[1] On July 27, 1992, a Texas court entered a "voluntary paternity decree" declaring that Lorelyn Penero Miller is the child of Charlie R. Miller. Ms. Miller was twenty-two years of age at that time. *See* Pl.'s Mot. for Leave to File Supplemental Mem. of P. & A. in Opp'n to Def.'s Mot. to Dismiss, Ex. 1.

that plaintiff was born "illegitimate," and a father's name and nationality does not appear in the record. *See* Def.'s Mot. to Dismiss, Ex. A.

In November, 1991, when she was twenty-one years old, plaintiff first filed an application for registration and documentation as a United States Citizen with the American Embassy in Manila. The application was denied in March, 1992. This decision was upheld in November, 1992 by Thomas W. Callow, Acting Director of the Office of Citizen Consular Services of the United States Department of State.

Plaintiff initiated this civil action in the United States District Court for the Eastern District of Texas. After the defendant moved to dismiss or, in the alternative, to transfer venue, plaintiff filed an amended complaint adding her father, Charlie Miller, as a co-plaintiff. The district court dismissed the claims of plaintiff Charlie Miller and ordered that the case be transferred to this jurisdiction where venue over Lorelyn Penero Miller's claims would be proper. *Lorelyn Penero Miller v. Secretary of State, Warren Christopher*, No. 6:93CV39, (Order of E.D. Tex., June 2, 1993).

The Fourteenth Amendment provides, "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." U.S. Const. amend. XIV, § 1. Accordingly, plaintiff does not have a constitutional right under the Fourteenth Amendment to acquire citizenship. Moreover, plaintiff's father, Charlie Miller, has no constitutional right to transmit citizenship. *Rogers v. Bellei*, 401 U.S. 815, 830 (1971). Plaintiff, therefore, must

meet statutory requirements in order to acquire U.S. citizenship.

8 U.S.C. § 1409(a) sets forth the requirements for the acquisition of citizenship by a child born out of wedlock whose father is a U.S. citizen. As originally enacted, the paternity of the child born outside of wedlock to a father possessing U.S. citizenship must have been established by legitimation while the child was under the age of twenty-one. Legitimation could take place under the laws of the child's domicile or that of the father.

In 1986, § 1409(a) was amended and now contains the following provision:

> (a) The provisions . . . shall apply as of the date of birth to a person born out of wedlock if –
>
> (1) a blood relationship between the person and the father is established by clear and convincing evidence,
>
> (2) the father had the nationality of the U.S. at the time of the person's birth,
>
> (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
>
> (4) while the person is under the age of 18 years –
>
> (A) the person is legitimated under the law of the person's residence or domicile,
>
> (B) the father acknowledges paternity of the person in writing under oath, or

> (C) the paternity of the person is established by adjudication of a competent court.

8 U.S.C. § 1409(a) (1988).

Individuals such as Lorelyn Penero Miller, who were at least 15, but under 18, as of the date of the 1986 amendment of § 1409(a) may elect to apply either version of § 1409(a). Plaintiff's application was denied for failure to establish her legitimation prior to her twenty-first birthday and for failure to meet the requirements of § 1409(a)(3)-(4).

Plaintiff does not contend that she satisfied the requirements of 8 U.S.C. § 1409(a) for purposes of a grant of U.S. citizenship.[2] Rather, plaintiff alleges that the distinction between "legitimate" and "illegitimate" children is an unconstitutional violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. *See* Pl.'s First Am. Compl., ¶ XII, § 1. She

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[2] Plaintiff filed a motion for leave to file supplemental memorandum of points and authorities in opposition to defendant's motion to dismiss in which she urges this court to interpret the voluntary paternity decree, *supra* note 1, which legitimated the plaintiff effective retroactively to her date of birth for the purpose of state law, as establishing the paternity of the plaintiff while she was under the age of eighteen years. The effect, the plaintiff argues, is that she now meets the requirements of § 1409(a)(4)(A). This court, however, agrees with the State Department's conclusion that a child born out of wedlock must be legitimated prior to her eighteenth birthday in order to meet the statutory requirements. *See* Pl.'s Mot. for Leave to File Supplemental Mem. of P. & A. in Opp'n to Def.'s Mot. to Dismiss, Ex. 2.

therefore requests that the court declare her a citizen of the U.S. *See* ¶ XVII, § 2.

Defendant alleges, on the basis of the pleadings now before the court, that plaintiff's complaint should be dismissed for lack of subject matter jurisdiction because plaintiff lacks standing to adjudicate such a claim. The law is well settled that the party invoking federal jurisdiction bears the burden of establishing the following essential elements of the constitutional requirement of standing:

> 1. The plaintiff must have suffered an injury in fact – an invasion of a legally protected interest – which is concrete and particularized, and actual or imminent;
>
> 2. There must be a causal connection between the injury and the conduct complained of; and
>
> 3. It must be likely, as opposed to speculative, that the injury will be redressed by a favorable decision.

Lujan v. Defenders of Wildlife, ___ U.S. ___, 112 S.Ct. 2130, 2136 (1992).

Defendant does not contest that plaintiff has suffered an injury, nor that the injury was caused by the conduct at issue. Indeed, plaintiff has suffered an injury in that she has been denied U.S. citizenship for failing to meet the statutory requirements of 8 U.S.C. § 1409(a). Furthermore, there is a causal connection between this injury and her complaint that the statute is unconstitutional. However, defendant argues that plaintiff has failed to demonstrate any redressable injury. This court agrees.

In *INS v. Pangilinan*, the Supreme Court determined that the courts do not have the power to confer citizenship in the absence of statutory authority. The Court stated, "once it has been determined that a person does not qualify for citizenship, . . . the district court has no discretion to ignore the defect and grant citizenship." *INS v. Pangilinan*, 486 U.S. 875, 884 (1988). Even if this court should conclude that 8 U.S.C. § 1409(a) is unconstitutional, this court could not grant citizenship to plaintiff. As defendant notes, this could only be accomplished by legislative action. Only Congress has the power to confer citizenship to persons not constitutionally entitled to citizenship. Therefore, this court concludes that plaintiff lacks standing because she does not meet the redressability requirement.

Accordingly, it is hereby ORDERED that defendant's 12(b) (1) motion to dismiss is GRANTED. It is further ORDERED that this case is DISMISSED.

It is further ORDERED that the plaintiff's motion for leave to file supplemental memorandum of points and authorities in opposition to defendant's motion to dismiss is GRANTED. The clerk shall also file plaintiff's "Comments on Defendant's Reply to Plaintiff's Opposition to Defendant's Motion to Dismiss" as a sur-reply.

SO ORDERED.

/s/ Royce C. Lamberth
Royce C. Lamberth
United States District Judge

DATE: 4-29-94

APPENDIX C

United States Department of State

Washington, D.C. 20520

(LOGO) NOV - 5 1992

Dear Mr. Patterson:

I am responding to your September 10, 1992, letter regarding the citizenship of Lorelyn Penero Miller. I apologize for the delay in our response, but we felt we should consider carefully the points you raised before writing.

As Mr. Fred Smith of my staff informed you on October 16 and 26, and previously, this office is familiar with Ms. Miller's case. The American Embassy in Manila referred the matter to us when the case was first adjudicated in March, and again when it was reconsidered in August. In both instances, the Department concluded that Ms. Miller did not acquire U.S. citizenship.

Lorelyn Penero Miller was born out of wedlock to a U.S. citizen father and a Philippine mother on June 20, 1970, in Angeles City, Pampanga, the Philippines. Ms. Miller seeks to establish that she acquired U.S. citizenship through her U.S. citizen father under Section 301(a)(7) of the Immigration and Nationality Act of 1952, as made applicable by Section 309(a) of the Act. In order to establish a claim under Section 309(a) INA, a legal and a biological relationship must exist between the applicant and the citizen parent.

As you know, 22 C.F.R. 51.40 provides that the burden of proof is upon the applicant to establish a claim to U.S. citizenship. The Department is satisfied that Mr.

Charlie R. Miller, the putative father, is a U.S. citizen, that he possesses sufficient physical presence in the United States to transmit citizenship, and that there is sufficient evidence that he had access to the applicant's mother at the probable time of conception.

Since Ms. Miller's parents were never married, Section 309(a) INA, as amended, requires that she must be legitimated by her U.S. citizen father prior to attaining age eighteen under either the laws of her father's state of domicile in the United States or the laws of the Philippines. Under Article 269 of the Philippine Civil Code, natural children may only be legitimated by the intermarriage of the parents. On July 27, 1992, a Texas court entered a "voluntary paternity decree" declaring that Lorelyn Penero Miller is the child of Charlie R. Miller. Ms. Miller was twenty-two years of age at that time.

The Department is aware that, when a child is legitimated under state law, legitimation is effective retroactively to the time of the child's birth for the purpose of state law. The fact that an individual is considered legitimate from birth under state law does not, however, address the requirements of Section 309(a)(4) INA, which requires that a child born out of wedlock be legitimated before age eighteen in order to acquire U.S. citizenship under Section 301(g) INA (formerly Section 301(a)(7) INA). Without such legitimation before age eighteen, there is no legally recognized relationship under the INA and the child acquires no rights of citizenship through an American citizen parent.

Your letter directs the Department's attention to the case of *LeBrun v. Thornburgh*, 777 F. Supp. 1204 (D.N.J. 1991), where the Court concluded that the distinction in the INA between "legitimate" and "illegitimate" children is an unconstitutional violation of the equal protection clause. The Department of State was removed from that action. Although the Department of Justice did not appeal the Court's decision, neither the Department of State nor the Immigration and Naturalization Service are applying the decision in *LeBrun v. Thornburgh*. Section 309(a)(4) INA has not been repealed by the Congress or declared unconstitutional by the U.S. Supreme Court.

Thus, the Department must stand by its original finding that Ms. Miller failed to acquire United States citizenship because she was not legitimated prior to her eighteenth birthday. There appears to be a misapprehension on your part concerning the point of law involved. Your letter claims that the Department has misinterpreted Texas law concerning legitimation. While we accept your contention that there is no time limit under Texas law for legitimation of a child, there is a definite limit under the Immigration and Nationality Act (INA). Section 309(a)(4) of that Act requires that a child born out of wedlock must be legitimated under the laws of the persons's residence or domicile "while the person is under the age of eighteen years" in order to acquire U.S. citizenship under Section 301(g) (formerly 301(a)(7)) INA.

There is no administrative appeal process in an acquisition of citizenship case. Such cases always remain open, meaning that additional evidence to establish a claim to citizenship may be submitted at any time. We have now evaluated Ms. Miller's case three times, each

time reaching the same conclusion. We regret that our decision in this case cannot be favorable.

Sincerely,

/s/ Thomas W. Callow
Thomas W. Callow
Acting Director
Office of Citizen Consular Services

APPENDIX D

(LOGO)

EMBASSY OF THE
UNITED STATES OF AMERICA
MANILA, PHILIPPINES

August 11, 1992

Donald Ross Patterson
777 South Broadway
Tyler, TX 75701

Dear Mr. Patterson:

Thank you for your letter of July 30, 1992, regarding the registration as a U.S. citizen of Lorelyn Penero Miller.

We are forwarding a copy to the State Department of the petition decree which legitimizes Lorelyn, and we are asking that the case be reconsidered. Although the final determination will be made in Washington, in our opinion the petition decree legitimizes Lorelyn at birth. Should the Department agree with us, we will be most pleased to register her as a U.S. citizen and issue her a U.S. passport.

We will contact Lorelyn directly as soon as a decision is reached in this matter.

Sincerely,

/s/ Richard Rosenman
Richard Rosenman
Chief, Passport and Citizenship Unit

APPENDIX E

CAUSE NO. 92-1491-D

IN THE INTEREST OF	X	IN THE 321ST JUDICIAL
LORELYN PENERO MILLER, aka	X X X	DISTRICT COURT SMITH COUNTY, TEXAS
LORENA PENERO MILLER	X X	

VOLUNTARY PATERNITY DECREE

(Filed July 27, 1992)

On this date came on for hearing the Petition of Charlie R. Miller for Voluntary Paternity of Lorelyn Penero Miller.

The Court examined the pleadings and heard the evidence and argument of counsel. The Court finds that all necessary prerequisites of law have been legally satisfied, that this Court has jurisdiction of all the parties and subject matter of this cause and that no other Court has continuing jurisdiction. All persons entitled to citation were properly cited. No jury having been demanded, all matters in controversy were submitted by Court. The record of testimony was duly reported by Cheryl Toles.

The Court finds that the following child, is the subject of this case:

Name: Lorelyn Penero Miller Sex: Female
Birthplace: Angeles City, Republic of the Philippines
Birthdate: June 20, 1970

Present Residence: 1365 Mariveles Street.
Angeles City, Philippines
Social Security Number: _____

The Court finds that:

1. The parent-child relationship between the children and the natural mother of the children has not been terminated by a decree of a Court;

2. A statement of paternity has been executed by Charlie R. Miller as provided in the Texas Family Code, Chapter 13; and that the facts recited in the statement are true;

IT IS NOW ORDERED that Charlie R. Miller be and he is found to be the biological and legal father of Lorelyn Penero Miller. The parent-child relationship is created between the father and the child as if the child were born to the father and mother during marriage.

IT IS FURTHER ORDERED that the name of the child is Lorelyn Penero Miller.

Costs of Court are taxed against the party by whom incurred.

All other relief not expressly granted is denied.

Signed this the 27th day of July, 1992.

/s/ RUTH J. BLAKE, Judge
321st District Court
Judge Presiding